

**TRANSMITTAL AND NOTICE OF APPROVAL OF  
STATE PLAN MATERIAL**

FOR: HEALTH CARE FINANCING ADMINISTRATION

1. TRANSMITTAL NUMBER:

0 0 — 0 1 5

2. STATE:

Minnesota

3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL  
SECURITY ACT (MEDICAID)

4. PROPOSED EFFECTIVE DATE

May 16, 2000

TO: REGIONAL ADMINISTRATOR  
HEALTH CARE FINANCING ADMINISTRATION  
DEPARTMENT OF HEALTH AND HUMAN SERVICES

5. TYPE OF PLAN MATERIAL (Check One):

☐ NEW STATE PLAN☐ AMENDMENT TO BE CONSIDERED AS NEW PLAN☒ AMENDMENT

COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (Separate Transmittal for each amendment)

6. FEDERAL STATUTE/REGULATION CITATION:

42 CFR 440.167

7. FEDERAL BUDGET IMPACT:

a. FFY '00 \$ 0  
b. FFY '01 \$ 0

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:

Att. 3.1-A, pp. ~~76-76p~~ 78-78s  
Att. 3.1-B, pp. ~~75-75p~~ 77-77s  
Att. 4.19-B, pp 729. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION  
OR ATTACHMENT (If Applicable):Att. 3.1-A, pp 76-76p  
same  
Att. 3.1-B, pp 75-75p  
Att. 4.19-B pp. 72

10. SUBJECT OF AMENDMENT:

Personal Care Services

11. GOVERNOR'S REVIEW (Check One):

- ☒
- GOVERNOR'S OFFICE REPORTED NO COMMENT
- 
- ☐
- COMMENTS OF GOVERNOR'S OFFICE ENCLOSED
- 
- ☐
- NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL

☐ OTHER, AS SPECIFIED:

12. SIGNATURE OF STATE AGENCY OFFICIAL:

Mary B. Kennedy

13. TYPED NAME:

Mary B. Kennedy

14. TITLE:

Medicaid Director

15. DATE SUBMITTED:

June 29, 2000

16. RETURN TO:

Stephanie Schwartz  
Minnesota Department of Human Services  
Federal Relations Unit  
St. Paul, Minnesota 55155-3853

## FOR REGIONAL OFFICE USE ONLY

17. DATE RECEIVED:

6/30/00

18. DATE APPROVED:

3/10/01

## PLAN APPROVED - ONE COPY ATTACHED

19. EFFECTIVE DATE OF APPROVED MATERIAL:

May 16, 2000

20. SIGNATURE OF REGIONAL OFFICIAL:

Cheryl Harris

21. TYPED NAME:

Cheryl A. Harris

22. TITLE:

Associate Regional Administrator  
Division of Medicaid and Children's Health

23. REMARKS:

RECEIVED

JUN 30 2000

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**MINNESOTA**  
**MEDICAL ASSISTANCE**  
Federal Budget Impact of Proposed State Plan Amendment TN 00-15  
Attachments 3.1-A/B: Personal Care Services

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Until July 1, 2001, proposed State plan amendment TN 00-15 permits noncorporate legal guardians and conservators of adult recipients to provide personal care services. In accordance with §1905(a)(24) of the Social Security Act and 42 CFR §440.167(a)(2) and (b), the guardian or conservator must not be the responsible party. Neither may the guardian or conservator be the personal care provider organization.

Because this change will affect only a small number of cases, the Department does not expect that TN 00-15 will have a budget impact.

26. Personal care services.

Personal care services are provided by personal care provider organizations or by use of the ~~fiscal agent~~ PCA Choice option.

**A. Personal care provider organizations**

Personal care services provider qualifications:

- Personal care assistants must be employees of or under contract with a personal care provider organization within the service area. If there are not two personal care provider organizations within the service area, the Department may waive this requirement. If there is no personal care provider organization within the service area, the personal care assistant must be enrolled as a personal care provider.
- If a recipient's diagnosis or condition changes, requiring a level of care beyond that which can be provided by a personal care provider, non-Medicare certified personal care providers must refer and document the referral of dual eligibles to Medicare providers (when Medicare is the appropriate payer).
- Effective July 1, 1996, personal care assistant means a person who:
  - a) is at least 18 years old, except for persons 16 to 18 years of age who participated in a related school-based job training program or have completed a certified home health aide competency evaluation;
  - b) is able to effectively communicate with the recipient and the personal care provider organization;
  - c) is able to and provides covered personal care services according to the recipient's plan of care, responds appropriately to the recipient's needs, and reports changes in the recipient's conditions to the supervising qualified professional. For the purposes of this item, "qualified professional" means a

26. Personal care services. (continued)

registered nurse or a mental health professional defined in item 6.d.A. of this attachment;

- d) is not a consumer of personal care services; and
- e) is subject to criminal background checks and procedures specified in the state human services licensing act.

- Effective July 1, 1996, personal care provider organization means an entity enrolled to provide personal care services under medical assistance that complies with the following:

- a) owners who have a five percent interest or more, and managerial officials are subject to a background study. This applies to currently enrolled personal care provider organizations and those entities seeking to enroll as a personal care provider organization. Effective November 10, 1997, an organization is barred from enrollment if an owner or managerial official of the organization has been convicted of a crime specified in the state human services licensing act, or a comparable crime in another jurisdiction, unless the owner or managerial official meets the reconsideration criteria specified in the state human services licensing act;
- b) the organization must maintain a surety bond and liability insurance throughout the duration of enrollment and provide proof thereof. The insurer must notify the Department of the cancellation or lapse of policy; and
- c) the organization must maintain documentation of personal care services as specified in rule, as well as evidence of compliance with personal care assistant training requirements.

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26. Personal care services. (continued)

**B. ~~Fiscal agent~~ PCA Choice option**

Under this option, the recipient and ~~consulting qualified professional~~ do not require professional delegation. ~~An individual may be both a consulting professional and a qualified professional.~~

- The recipient or responsible party:
  - a) uses a ~~fiscal agent~~ PCA Choice provider, not a personal care provider organization. A ~~fiscal agent~~ PCA Choice provider assists the recipient to account for covered personal care assistant services. A ~~fiscal agent~~ PCA Choice provider is considered a joint employer of the qualified professional described in item A, ~~the consulting professional described below~~, and the personal care assistant, and may not be related to the recipient, ~~consulting qualified professional~~, or personal care assistant. A ~~fiscal agent~~ PCA Choice provider or owner of the entity providing ~~fiscal agent~~ PCA Choice services must pass a criminal background check according to the state human services licensing act;
  - b) uses a ~~consulting qualified professional~~ (for the purposes of this item, a person meeting the qualifications for ~~qualified professional described in item A~~) for help in developing and revising a plan to meet the recipient's assessed needs and for help in supervising the personal care assistant services ~~in areas that require professional delegation~~, as ~~determined~~ recommended by a public health nurse;
  - c) supervises the personal care assistant if there is no qualified professional;
  - d) with the ~~fiscal agent~~ PCA Choice provider, hires and terminates the ~~consulting qualified professional~~;

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26.        Personal care services.    (continued)

- e)    with the ~~fiscal agent~~ PCA Choice provider, hires and terminates the personal care assistant;
- f)    orients and trains the personal care assistant in areas that do not require professional delegation as determined by the county public health nurse;
- g)    supervises and evaluates the personal care assistant in areas that do not require professional delegation as determined in the assessment;
- h)    cooperates with the ~~consulting professional or~~ qualified professional and implements recommendations pertaining to the health and safety of the recipient;
- i)    with the ~~fiscal agent~~ PCA Choice provider, hires a qualified professional to train and supervise the performance of delegated tasks done by the personal case assistant;
- j)    monitors services and verifies in writing the hours worked by the personal care assistant and the ~~consulting professional or~~ qualified professional;
- k)    develops and revises a care plan with assistance from the ~~consulting professional or~~ qualified professional;
- l)    verifies and documents the credentials of the ~~consulting professional or~~ qualified professional; and
- m)    together with the ~~fiscal agent~~ PCA Choice provider, ~~consulting professional or~~ qualified professional, and personal care assistant, enters into a written agreement before services begin. The agreement must include:

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26.        Personal care services.    (continued)

- 1)    the duties of the recipient, ~~fiscal agent~~  
      PCA Choice provider, ~~consulting~~  
      ~~professional or~~ qualified professional,  
      and personal care assistant;
- 2)    the salary and benefits for the ~~consulting~~  
      ~~professional or~~ qualified professional and  
      personal care assistant;
- 3)    the administrative fee of the ~~fiscal agent~~  
      PCA Choice provider and services paid for  
      with that fee, including background  
      checks;
- 4)    procedures to respond to billing or  
      payment complaints; and
- 5)    procedures for hiring and terminating the  
      ~~consulting professional or~~ qualified  
      professional and personal care assistant.

The ~~fiscal agent~~ PCA Choice provider:

- a)    enrolls in medical assistance;
- b)    requests and secures background checks on  
      ~~consulting professionals~~, qualified  
      professionals and personal care assistants  
      according to the state human services licensing  
      act;
- c)    bills for personal care assistant and  
      ~~consulting professional or~~ qualified  
      professional services;
- d)    pays the ~~consulting professional or~~ qualified  
      professional and personal care assistant based  
      on actual hours of services provided;
- e)    withholds and pays all applicable federal and  
      state taxes;

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26.        Personal care services.    (continued)

- f)    makes the arrangements and pays unemployment insurance, taxes, workers' compensation, liability insurance, and other benefits, if any;
- g)    verifies and documents hours worked by the ~~consulting professional or~~ qualified professional and personal care assistant; and
- h)    ensures arm's length transactions with the recipient and personal care assistant.

At a minimum, consulting qualified professionals visit the recipient in the recipient's home at least once every year. ~~Consulting professionals and qualified~~ Qualified professionals:

- a)    report to the county public health nurse concerns relating to the health and safety of the recipient; and
- b)    report to the appropriate authorities any suspected abuse, neglect, or financial exploitation of the recipient.

As part of the assessment and reassessment process in item 6.d.B. of this attachment, the following must be met to use, or continue to use, a ~~fiscal agent~~ PCA Choice provider:

- a)    the recipient must be able to direct the recipient's own care, or the responsible party for the recipient must be readily available to direct the care of the personal care assistant;
- b)    the recipient or responsible party must be knowledgeable of the health care needs of the recipient and be able to effectively communicate those needs;
- c).    the recipient cannot receive shared personal care services (shared services); and



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26. Personal care services. (continued)

- d) a service update cannot be used in lieu of an annual reassessment.

Authorization to use the ~~fiscal agent~~ PCA Choice option will be denied, revoked, or suspended if:

- a) the public health nurse or ~~consulting~~ qualified professional determines that use of this option jeopardizes the recipient's health and safety;
- b) the parties do not comply with the written agreement; or
- c) the use of the option results in abusive or fraudulent billing.

The recipient or responsible party may appeal this decision. A denial, revocation or suspension will not affect the recipient's authorized level of personal care assistant services.

- ~~Personal care services cannot be provided by parents of adult recipients, children or siblings of the recipient, unless these relatives meet one of the following hardship criteria and the Department waives this requirement:~~

- a) ~~the relative resigns from a part-time or full-time job to provide personal care for the recipient;~~
- b) ~~the relative goes from a full-time job to a part-time job with less compensation to provide personal care for the recipient;~~
- c) ~~the relative takes a leave of absence without pay to provide personal care for the recipient;~~
- d) ~~the relative incurs substantial expenses by providing personal care for the recipient; or~~

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26. Personal care services. (continued)

e) ~~because of labor conditions, special language needs, or intermittent hours of care needed, the relative is needed in order to provide an adequate number of qualified personal care assistants to meet the medical needs of the recipient.~~

- ~~Under no circumstance may a hardship waiver be granted if the relative is the recipient's legal guardian.~~

Amount, duration and scope of personal care services:

- Department prior authorization is required for all personal care services and supervision. Prior authorization is based on the physician's orders; the recipient's needs, diagnosis, and condition; an assessment of the recipient; primary payer coverage determination information as required; the service plan; and cost effectiveness when compared to other care options. The Department may authorize up to the following amounts of personal care service:
  - a) up to 2 times the average number of direct care hours provided in nursing facilities for the recipient's comparable case mix level;
  - b) up to 3 times the average number of direct care hours provided in nursing facilities for recipients with complex medical needs, or who are dependent in at least seven activities of daily living and need either physical assistance with eating or have a neurological diagnosis;
  - c) up to 60 percent of the average payment rate for care provided in a regional treatment center for recipients who exhibit, or that without supervision, observation, or redirection would exhibit, one or more of the following behaviors:

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26.        Personal care services.    (continued)

- 1)    self-injury;
  - 2)    physical injury to others; or
  - 3)    destruction of property;
- d)    up to the amount medical assistance would pay for care provided in a regional treatment center for recipients referred by a regional treatment center preadmission evaluation team; or
- e)    up to the amount medical assistance would pay for facility care for recipients referred by a preadmission screening team; and
- f)    a reasonable amount of time for the provision of supervision of personal care services.
- Department prior authorization is also required if more than two reassessments to determine a recipient's need for personal care services are needed during a calendar year.
  - Personal care services must be prescribed by a physician. The service plan must be reviewed and revised as medically necessary at least once every 365 days.
  - For personal care services
    - a)    effective July 1, 1996, the amount and type of service authorized based upon the assessment and service plan will follow the recipient if the recipient chooses to change providers;
    - b)    effective July 1, 1996, if the recipient's medical need changes, the recipient's provider may request a change in service authorization; and
    - c)    as of July 1, 1998, in order to continue to receive personal care services after the first year, the recipient or the responsible party, in conjunction with the public health nurse, may complete a service update on forms

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26. Personal care services. (continued)

developed by the Department. If a service update is completed, it substitutes for the annual reassessment described in item 6.d.B. of this attachment.

- All personal care services must be supervised as described in this item. A reasonable amount of time for the provision of supervision shall be authorized.
- Personal care services are provided for recipients who live in their own home if their own home is not a hospital, nursing facility, intermediate care facility for the mentally retarded (ICF/MR), institution for mental disease, or licensed health care facility.
- Recipients may use approved units of service outside the home when normal life activities take them outside the home and when, without the provision of personal care, their health and safety would be jeopardized. Effective July 1, 1996, total hours for personal care services, whether performed inside or outside a recipient's home, cannot exceed that which is otherwise allowed for personal care services in an in-home setting.

~~Effective July 1, 1998, to receive personal care services at school, the recipient or responsible party must provide written authorization in the recipient's care plan identifying the chosen provider and the daily amount of services to be used at school.~~

- Recipients may receive shared personal care services (shared services), defined as providing personal care services by a personal care assistant to two or three recipients at the same time and in the same setting. For purposes of this item, "setting" means the home or foster care home of one of the recipients, or a child care program in which all recipients served by one personal care assistant are participating, which has state licensure or is operated by a local school district or private

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26. Personal care services. (continued)

school. The provider must offer the recipient or responsible party the option of shared services; if accepted, the recipient or responsible party may withdraw participation in shared services at any time.

In addition to the documentation requirements for personal care provider service records in state rule, a personal care provider must meet documentation requirements for shared services and must document the following in the health service record for each recipient sharing services:

- a) permission by the recipient or responsible party for the maximum number of shared services hours per week chosen by the recipient;
- b) permission by the recipient or responsible party for personal care assistant services provided outside the recipient's home;
- c) permission by the recipient or responsible party for others to receive shared services in the recipient's home;
- d) revocation by the recipient or responsible party of the shared service authorization, or the shared service to be provided to others in the recipient's home, or the shared services to be provided outside the recipient's home;
- e) supervision of the shared personal care assistant services by the qualified professional, including the date, time of day, number of hours spent supervising the provision of shared services, whether the supervision was face-to-face or another method of supervision, changes in the recipient's condition, and shared services scheduling issues and recommendations;

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26. Personal care services. (continued)

- f) documentation by the qualified professional of telephone calls or other discussions with the personal care assistant regarding services being provided to the recipient; and
- g) daily documentation of the shared services provided by each identified personal care assistant including:
  - 1) the names of each recipient receiving share services together;
  - 2) the setting for the shared services, including the starting and ending times that the recipient received shared services; and
  - 3) notes by the personal care assistant regarding changes in the recipient's condition, problems that may arise from the sharing of services, scheduling issues, care issues, and other notes as required by the qualified professional.

In order to receive shared services:

- a) the recipient or responsible party, in conjunction with the county public health nurse, must determine:
  - 1) whether shared services is an appropriate option based on the individual needs and preferences of the recipient; and
  - 2) the amount of shared services allocated as part of the overall authorization of personal care services;
- b) the recipient or responsible party, in conjunction with the supervising qualified professional, must arrange the setting and grouping of shared services based on the individual needs and preferences of the recipients;

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26. Personal care services. (continued)

- c) the recipient or responsible party, and the supervising qualified professional, must consider and document in the recipient's health service record:
  - 1) the additional qualifications needed by the personal care assistant to provide care to several recipients in the same setting;
  - 2) the additional training and supervision needed by the personal care assistant to ensure that the needs of the recipient are appropriately and safely met. The provider must provide on-site supervision by a qualified professional within the first 14 days of shared services, and monthly thereafter;
  - 3) the setting in which the shared services will be provided;
  - 4) the ongoing monitoring and evaluation of the effectiveness and appropriateness of the service and process used to make changes in service or setting; and
  - 5) a contingency plan ~~which~~ that accounts for absence of the recipient in a shared services setting due to illness or other circumstances and staffing contingencies.
- The following personal care services are covered under medical assistance as personal care services:
  - a) bowel and bladder care;
  - b) skin care to maintain the health of the skin;
  - c) repetitive range of motion, muscle strengthening exercises, and other tasks specific to maintaining a recipient's optimal level of function;

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26. Personal care services. (continued)

- d) respiratory assistance;
- e) transfers and ambulation;
- f) bathing, grooming, and hair washing necessary for personal hygiene;
- g) turning and positioning;
- h) assistance with furnishing medication that is self-administered;
- i) application and maintenance of prosthetics and orthotics;
- j) cleaning medical equipment;
- k) dressing or undressing;
- l) assistance with eating, meal preparation and necessary grocery shopping;
- m) accompanying a recipient to obtain medical diagnosis or treatment;
- n) effective July 1, 1996, assisting, monitoring, or prompting the recipient to complete the services in items (a) to (m);
- o) effective July 1, 1996, redirection, monitoring, and observation that are medically necessary and an integral part of completing the personal care described in items (a) to (n);
- p) effective July 1, 1996, redirection and intervention for behavior, including observation and monitoring;
- q) effective July 1, 1996, interventions for seizure disorders, including monitoring and observation if the recipient has had a seizure that requires intervention within the past three months;



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26. Personal care services. (continued)

- r) effective July 1, 1998, tracheostomy suctioning using a clean procedure if the procedure is properly delegated by a registered nurse. Before this procedure may be delegated to a personal care assistant, a registered nurse must determine that the tracheostomy suctioning can be accomplished utilizing a clean, rather than a sterile procedure, and must ensure that the personal care assistant has been taught the proper procedure. A clean procedure is defined as a technique reducing the numbers of microorganisms, or prevents or reduces the transmission of microorganisms from one recipient or place to another. It may be used beginning 14 days after insertion; and
- s) incidental household services that are an integral part of a personal care service described in items a) to r).
  - The above limitations do not apply to medically necessary personal care services under EPSDT.
- The following services are **not covered** under medical assistance as personal care services:
  - a) ~~a health service~~ services provided and billed by a provider who is not an enrolled personal care provider;
  - b) personal care ~~service~~ services that ~~is~~ are provided by ~~a person who is~~ the recipient's spouse, legal guardian ~~for an adult or child recipient~~, parent of a recipient under age 18, or the recipient's responsible party;
  - c) personal care services that are provided by the recipient's adult child or sibling, or the adult recipient's parent, unless these relatives meet one of the hardship criteria, below, and receive a waiver from the Department. As of May 16, 2000, any of these

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26. Personal care services. (continued)

relatives who are also guardians or conservators of adult recipients, when the guardians or conservators are not the owner of the recipient's personal care provider organization, are included in this list.

The hardship waiver criteria are:

- 1) the relative resigns from a part-time or full-time job to provide personal care for the recipient;
  - 2) the relative goes from a full-time job to a part-time job with less compensation to provide personal care for the recipient;
  - 3) the relative takes a leave of absence without pay to provide personal care for the recipient;
  - 4) the relative incurs substantial expenses by providing personal care for the recipient; or
  - 5) because of labor conditions, special language needs, or intermittent hours of care needed, the relative is needed in order to provide an adequate number of qualified personal care assistants to meet the medical needs of the recipient.
- c)d) effective July 1, 1996, services provided by a foster care provider of a recipient who cannot direct his or her own care, unless a county or state case manager visits the recipient as needed, but not less than every six months, to monitor the health and safety of the recipient and to ensure the goals of the care plan are met;
- d)e) services provided by the residential or program license holder in a residence for more than four persons;

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26. Personal care services. (continued)

- ~~e~~f) services that are the responsibility of a residential or program license holder under the terms of a service agreement and administrative rules;
- ~~f~~g) sterile procedures;
- ~~g~~h) giving of injections of fluids into veins, muscles, or skin;
- ~~h~~i) homemaker services that are not an integral part of a personal care service;
- ~~i~~j) home maintenance or chore services;
- ~~j~~k) personal care services that are the responsibility of the foster care provider;
- ~~k~~l) personal care services when the number of foster care residents is greater than four;
- ~~l~~m) personal care services when combined with home health services, private duty nursing services, and foster care payments that exceed the total amount that public funds would pay for the recipient's care in a medical institution. This is a utilization control limitation conducted on a case-by-case basis in order to provide the recipient with the most cost-effective, medically appropriate services;
- ~~m~~n) services not specified as covered under medical assistance as personal care services;
- ~~n~~o) effective January 1, 1996, assessments by personal care provider organizations or by independently enrolled registered nurses;
- ~~o~~p) effective July 1, 1996, services when the responsible party is an employee of, or under contract with, or has any direct or indirect financial relationship with the personal care provider or personal care assistant, unless case management is provided (applies to foster

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26. Personal care services. (continued)

care settings);

p+r) effective January 1, 1996, personal care services that are not in the service plan;

q+r) home care services to a recipient who is eligible for Medicare covered home care services (including hospice), if elected by the recipient, or any other insurance held by the recipient;

r+s) services to other members of the recipient's household;

s+t) any home care service included in the daily rate of the community-based residential facility where the recipient resides;

t+u) personal care services that are not ordered by the physician; or

u+v) services not authorized by the commissioner or the commissioner's designee.

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26. Personal care services. (continued)

- e) a personal care assistant is supervised by a registered nurse, public health nurse, school nurse, occupational therapist, physical therapist, or speech pathologist;
  - f) service limits as described in this item do not apply;
  - g) PCA Choice is not an option;
  - h) only the following services are covered:
    - 1) bowel and bladder care;
    - 2) range of motion and muscle strengthening exercises;
    - 3) transfers and ambulation;
    - 4) turning and positioning;
    - 5) application and maintenance of prosthetics and orthotics;
    - 6) dressings or undressing;
    - 7) assistance with eating, nutrition and diet activities;
    - 8) redirection, monitoring, observation and intervention for behavior; and
    - 9) assisting, monitoring, or prompting the recipient to complete the services in subitems 1) through 8).
- To receive personal care services, the recipient or responsible party must provide written authorization in the recipient's care plan identifying the chosen provider and the daily amount of services to be used at school.

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26. Personal care services. (continued)

- School districts must secure informed consent to bill for personal care services. For the purposes of this item, "informed consent" means a written agreement, or an agreement as documented in the record, by a recipient or responsible party in accordance with Minnesota Statutes, section 13.05, subdivision 4, paragraph (d) and Minnesota Statutes, section 256B.77, subdivision 2, paragraph (p).